

NOTICE OF PROPOSED EXEMPT RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

PREAMBLE

- 1. Sections Affected:**
- | <u>Sections Affected:</u> | <u>Rulemaking Action:</u> |
|----------------------------------|----------------------------------|
| R20-5-1401 | New Section |
| R20-5-1402 | New Section |
| R20-5-1403 | New Section |
| R20-5-1404 | New Section |
- 2. Citations to agency’s statutory rulemaking authority to include the authorizing statute and the implementing statutes:**
- Authorizing statute: A.R.S. §§ 23-107(A)(1)
- Implementing statutes: A.R.S. § 23-1702(E); Laws 2021, Ch. 411, Senate Bill 1827, § 13(A)
- Note: An exception from the moratorium on rulemaking, Executive Order 2021-02, was provided for this rulemaking by Grace Appelbe, Policy Advisor in the Office of the Arizona Governor, by e-mail dated _____.
- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
- Notice of Rulemaking Docket Opening: 27 A.A.R. XXXX [editor to fill in] (*in this issue*)
- 4. The agency’s contact person who can answer questions about the rulemaking:**
- | | |
|------------|---|
| Name: | Gaetano Testini, Chief Counsel |
| Address: | Industrial Commission of Arizona
800 W. Washington St., Suite 303
Phoenix, AZ 85007 |
| Telephone: | (602) 542-5905 |
| Fax: | (602) 542-6783 |
| E-mail: | Gaetano.Testini@azica.gov |

5. An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

Pursuant to A.R.S. § 23-1702(E), the Industrial Commission of Arizona (the “Commission”) is required to adopt rules necessary to carry out Title 23, Chapter 11, Article 1 (Municipal Firefighter Cancer Reimbursement). The proposed rules address: (1) the establishment of a Municipal Firefighter Cancer Reimbursement Form approved by the Commission; (2) the process by which a Municipal Payor can seek reimbursement from the Municipal Firefighter Cancer Reimbursement Fund (the “Fund”); (3) required attestations that must be made in connection with a reimbursement claim; (4) the timeline for a Municipal Payor to submit a reimbursement claim; (5) the consequence of a Municipal Payer failing to file a timely reimbursement claim or not including all eligible amounts in a reimbursement claim; (6) the deadline by which the Commission will process reimbursement claims and payments; (7) recordkeeping and record inspection requirements pertaining to reimbursement claims; and (8) requirements pertaining to overpayments by the Fund.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Commission did not review or rely on any study relevant to the proposed rules.

7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The preliminary summary of the economic, small business and consumer impact:

A.R.S. Title 23, Chapter 11, Article 1 (Municipal Firefighter Cancer Reimbursement) – signed into law in 2021 – established the Fund, requires Arizona cities and towns to pay annual assessments into the Fund, and authorizes Municipal Payors (as defined in A.R.S. § 23-1701) to seek reimbursement from the Fund for eligible compensation and benefits paid by Municipal Payors to municipal firefighters and municipal fire investigators under A.R.S. § 23-901.09. The Commission is statutorily tasked with administering the Fund.

The Commission anticipates that the proposed rules will reduce regulatory burden on Municipal Payors (self-insured cities and towns, self-insurance pools used by cities or towns, and workers' compensation insurers used by cities or towns) by providing a streamlined process and timeline for seeking reimbursement from the Fund. The proposed rules will serve to accelerate the efficient processing of reimbursement claims. The Commission anticipates that the proposed rules will benefit Municipal Payors who have reimbursement claims under A.R.S. Title 23, Chapter 11, Article 1 and Commission staff that will be tasked with administering the Fund. The Commission does not anticipate that the proposed rules will have an adverse economic impact on small businesses or consumers.

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Gaetano Testini, Chief Counsel
Address: Industrial Commission of Arizona
800 W. Washington St., Suite 303
Phoenix, AZ 85007
Telephone: (602) 542-5905
Fax: (602) 542-6783
E-mail: Gaetano.Testini@azica.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Written comments can be submitted to the addresses listed in items 4 and 9 by the close of the comment period, which is at 5:00 p.m. on November 29, 2021. An oral proceeding on the proposed amended rule is scheduled for November 30, 2021, at 10:00 a.m., at the Industrial Commission of Arizona, 800 West Washington, Room 339, Phoenix, Arizona 85007.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:
a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The proposed rules do not require issuance of a regulatory permit or license.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

There is no federal law directly applicable to the subject of the proposed rulemaking.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

An analysis was not submitted.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

Not Applicable.

13. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 14. MUNICIPAL FIREFIGHTER CANCER REIMBURSEMENT FUND AND FIREFIGHTER AND FIRE INVESTIGATOR CANCER CLAIM REPORTING

R20-5-1401 Application of the Article and Definitions

A. This Article applies to reimbursement claims submitted to the Municipal Firefighter Cancer Reimbursement Fund under Arizona Revised Statutes ("A.R.S."), Title 23, Chapter 11.

B. The definitions in A.R.S. § 23-1701 apply in this Article.

C. "Fiscal year" shall mean the 12-month cycle that begins on July 1 and ends on June 30.

R20-5-1402 Reimbursement Claims

A. A Municipal Payor seeking reimbursement from the Fund shall submit a reimbursement claim in writing on the Municipal Firefighter Cancer Reimbursement Form approved by the Commission.

B. The Municipal Firefighter Cancer Reimbursement Form shall include the following attestations, which shall be made by an authorized representative of a Municipal Payor seeking reimbursement from the Fund:

1. The reimbursement request includes only eligible compensation and benefits paid under A.R.S. § 23-1702(A) on municipal firefighter or municipal fire investigator workers' compensation claims accepted under A.R.S. § 23-901.09.

2. The reimbursement request only includes amounts actually paid by the Municipal Payor for compensation and benefits under A.R.S. § 23-1702(A) during the immediately preceding fiscal year.
3. The reimbursement request does not include amounts paid for expenses relating to case management, vocational rehabilitation, or similar nonmedical costs.
4. The information included in, or submitted with, the Municipal Firefighter Cancer Reimbursement Form is true and correct.

C. The Municipal Firefighter Cancer Reimbursement Form shall not be changed, amended, or otherwise altered without the prior written approval of the Commission.

D. A Municipal Payor seeking reimbursement from the Fund for compensation and benefits paid during a fiscal year shall submit a reimbursement claim to the Commission between July 1 and August 31 immediately following the applicable fiscal year.

E. Failure to timely submit a reimbursement claim for compensation and benefits paid during a fiscal year before the claim submission deadline in subsection D will be deemed a waiver of the right of the Municipal Payor to request reimbursement for amounts paid during the applicable fiscal year. Failure to include all eligible compensation or benefits in a reimbursement claim before the claim submission deadline in subsection D will be deemed a waiver of the right of the Municipal Payor to request reimbursement for any omitted amounts paid during the applicable fiscal year.

F. The Commission shall process reimbursements pursuant to A.R.S. § 23-1702(C) on or before December 31 of each year.

G. The maximum annual amount of aggregate reimbursements paid by the Fund shall in no event exceed the total amount of monies in the Fund as of close of business on June 30 of the applicable fiscal year.

R20-5-1403 Recordkeeping and Record Inspections

A. Municipal Payors seeking reimbursement from the Fund shall maintain all records supporting amounts included in a reimbursement claim for at least ten years after the reimbursement claim is filed.

B. Municipal Payor records supporting amounts included in a reimbursement claim shall always be open for inspection by the Commission or representatives of the Commission to ascertain information necessary for its administration of A.R.S. §§ 23-1701 through 23-1703. Upon request, a Municipal Payor shall make such records available to the Commission within 30 days.

R20-5-1404 Fund Overpayments

A. A Municipal Payor that discovers an error in a reimbursement claim which may result or has resulted in an overpayment from the Fund shall notify the Commission of the error within three business days of discovery of the error.

B. Overpayments made by the Fund to Municipal Payors that are discovered through inspection of records, or otherwise, shall be returned to the Fund by the applicable Municipal Payor within 30 days of notification by the Commission.